

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DR. HANSEL M. DeBARTOLO)	
)	
Plaintiff,)	Case No. 07 C 7179
)	
v.)	JUDGE ZAGEL
)	MAGISTRATE JUDGE KEYS
SUBURBAN TEAMSTERS OF NORTHERN)	
ILLINOIS WELFARE FUND,)	
)	
Mutual Group.)	

**MEMORANDUM OF LAW OF DEFENDANT SUBURBAN TEAMSTERS
OF NORTHERN ILLINOIS WELFARE FUND'S MOTION TO DISMISS COMPLAINT**

Defendant SUBURBAN TEAMSTERS OF NORTHERN ILLINOIS WELFARE FUND ,
(hereinafter "Welfare Fund"), by and through its attorneys, Librado Arreola and Barry Collins of
Asher, Gittler, Greenfield & D'Alba, Ltd., submits this memorandum of law in support of its
motion to dismiss Plaintiff's Complaint.

The issue before the Court is whether Plaintiff has a valid assignment of the rights of a
plan participant or beneficiary, which assignment would allow Plaintiff to pursue his demands in
the Complaint. Plaintiff attached a written assignment to the Complaint, Exhibit A. The
assignment reads: "I assign my medical benefits and rights from Teamsters Local No. 142 to Dr.
H.M. DeBartolo Jr., for services rendered." Plaintiff's right to payment in Count I and to the
information and payment sought in Count II of the Complaint is premised on the theory that
Plaintiff is an assignee of a plan participant.

Under ERISA, 29 U.S.C. 1132(a)(1)(B), only a "participant" in a plan or a "beneficiary"
is entitled to file suit to collect plan benefits. Whether a participant or beneficiary may transfer
benefits to a third party, such as Plaintiff, is a question of contract. Only when a party proves

that he or she has a valid assignment does the party have standing to sue for medical benefits under ERISA. Plumb v. Fluid Pump Serv., Inc., 124 F.3d 849, 863 (7th Cir. 1997); Kennedy v. Connecticut General Life Insurance Co., 924 F.2d 698, 701 (7th Cir. 1991).

In this instance, Plaintiff's assignment is not valid because it does not give Plaintiff any rights against the SUBURBAN TEAMSTERS OF NORTHERN ILLINOIS WELFARE FUND. Rather, it only gives Plaintiff a right to seek payment on behalf of the participant from "Teamsters Local No. 142." Plaintiff's faulty assignment deprives it of standing and prevents Plaintiff from bringing this action against the SUBURBAN TEAMSTERS OF NORTHERN ILLINOIS WELFARE FUND.

WHEREFORE, the SUBURBAN TEAMSTERS OF NORTHERN ILLINOIS WELFARE FUND requests that this Honorable Court find that the assignment is not valid and grant its motion and to Dismiss the Complaint in its entirety.

Respectfully submitted,

Defendant SUBURBAN TEAMSTERS OF
NORTHERN ILLINOIS WELFARE FUND,

/s/ Librado Arreola
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